

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
No. 1:09-CR-17**

UNITED STATES OF AMERICA

v.

ALBERT CHARLES BURGESS, JR.

ORDER

THIS MATTER is before the Court upon Defendant's Motion for Relief from Waiver; Motion to Dismiss for Selective Prosecution (Doc. 156). For the following reasons, Defendant's Motion is **DENIED**.

The Court takes judicial notice that this is the third time Defendant has attempted to dismiss this case on double jeopardy grounds. (Docs. 156, 123, 109.) Assuming *arguendo* that the Court granted Defendant's motion to be relieved from his double jeopardy waiver, the legal analysis would not change because Counts One and Two of the Indictment address separate actions¹ involving different images and videos on different days. (Doc. 1.) Thus, even if Defendant's waiver was relieved, his Fifth Amendment claim fails as a matter of law.

IT IS THEREFORE ORDERED that Defendant's Motion for Relief from Waiver; Motion to Dismiss for Selective Prosecution (Doc. 156) is **DENIED**.

Signed: August 9, 2010



Graham C. Mullen
United States District Judge



¹ Count One charges Defendant with violating 18 U.S.C. § 2252(a)(4)(B), and Count Two charges Defendant with violating § 2252(a)(2).